

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR THE STATE OF FLORIDA

JOSE CALDERON,  
Plaintiff,

Case No.: 23-CA-014278  
Division: D

v.

ADELINE O'CONNOR,  
Defendant.

---

**ORDER GRANTING DEFENDANT'S MOTION IN LIMINE REGARDING  
ADMISSIBLE EVIDENCE OF PAST AND FUTURE EXPENSES FOR MEDICAL  
TREATMENT OR SERVICES**

**THIS CAUSE** is before the Court on Defendant's Motion in Limine regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services (Dkt. 83, the "Motion"). The Court held a hearing on February 20, 2025, via Zoom conferencing, has considered the arguments raised by counsel, and is otherwise fully advised in the premises.

It is **ORDERED AND ADJUDGED** as follows:

1. On March 24, 2023, Chapter 2013-15, Florida Laws, commonly known as HB 837, was ratified into law and, per Section 31, was made effective immediately. Section 6 of HB 837 created Section 768.0427(2), Fla. Stat., which described the evidence necessary to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action. As the plain language of the statute establishes, "[e]vidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but is not limited to, evidence as provided in this paragraph."
2. Immediately following the foregoing mandatory language, the Legislature delineates the evidence that "shall" be included and identifies various categories of evidence that a plaintiff must include to pursue past or future medical bills. The language of the statute makes clear, for example, that if the [plaintiff] has health care coverage other than Medicare or Medicaid, "evidence of the amount which such health care coverage is obligated to pay the health care

provider to satisfy the charges for the [plaintiff's] incurred medical treatment or services, plus the [plaintiff's] share of medical expenses under the insurance contract or regulation.”

Section 768.0427(2)(b)(1).<sup>i</sup>

3. It is a well-entrenched axiom of legal jurisprudence that “shall” is a mandatory term that in the context of statutory construction leaves no room for judicial discretion. “Shall” is a mandatory word that imposes a duty. *See Sanders v. City Of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008) (“The word ‘shall’ is mandatory in nature.”); *The Florida Bar v. Trazenfeld*, 833 So. 2d 734, 738 (Fla. 2002) (“The word ‘may’ when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word ‘shall.’”); *see also Johnson v. Johnson*, 88 So. 3d 335, 338 (Fla. 2d DCA 2012) (“We construe the words ‘shall’ and ‘must’ in this provision to impose a mandatory duty upon the trial court that must be performed before ruling.”).
4. Plaintiff challenges Defendant’s interpretation of the statute and contends that the statute only provides examples of proof, rather than categories of necessary proof. The Court disagrees. The Legislature elected to use the word “shall” to establish the necessary evidence required to establish entitlement to recover reasonable medical bills in the past and into the future. The Legislature is well-equipped to use permissive language where it intends to do so, and it is not the function of this Court to rewrite statutory language.
5. Despite the plain and unambiguous language of the statute, Plaintiff represented at the hearing that he is unable to support his past and future medical expenses with any evidence required by section 768.0427(2), Fla. Stat.
6. Plaintiff’s counsel acknowledges that Plaintiff had medical insurance at the time of this crash and his treatment for the crash. Nevertheless, Plaintiff’s counsel has obtained no information as to the “amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for [Plaintiff’s] incurred medical treatment or services, plus [Plaintiff’s]

share of medical expenses under the insurance contract or regulation.” § 768.0427(2)(b)3, Florida Statutes.

7. The Court recessed the hearing for several hours to enable Plaintiff’s counsel to devise a means for obtaining the information required by the language of the statute, and resumed the hearing several hours later. At the later hearing, Plaintiff’s counsel informed the Court that they were told by their expert that they would be unable to obtain information as required above, or for the later use as evidence in the claim for future medical treatment, under section 768.0427(2)(c)1.
8. Counsel for Plaintiff did not seek a continuance or any delay in the trial. The Court verbally ruled that, in accordance with the mandatory language of the statute, Plaintiff would be prohibited from presenting only the records of the unpaid bills since Plaintiff was unable to present the items that the statute states must be included with the unpaid bills. Based on the Court’s ruling, Plaintiff’s counsel elected to proceed on the basis of pain and suffering damages only, giving up the demand for past and future medical bills. <sup>1</sup>
9. Accordingly, Defendant’s Motion (Dkt. 83) is GRANTED, and Plaintiff is precluded in limine from introducing any evidence of past and future medical expenses.

**DONE AND ORDERED** in Chambers, Hillsborough County, Florida, on this 25 day of February, 2025.

23-CA-014278 2/25/2025 3:24:59 PM  
**23-CA-014278 2/25/2025 3:24:59 PM**

---

HON. EMILY A. PEACOCK  
CIRCUIT COURT JUDGE

Copies to all counsel of record

---

<sup>1</sup> During the trial, Plaintiff’s counsel proffered testimony from Plaintiff as to the bills he incurred for treatment of injuries he alleges were caused by the motor vehicle accident which is the basis of this trial. During cross examination of that proffer, the Court learned for the first time that Worker’s Compensation and PIP coverage had in fact paid more than half of these charges, and was never offered into evidence by Plaintiff, contrary to 768.0427(2)(a). “Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.”

---

<sup>i</sup> The full text of the subsection provides:

(2) **ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE EXPENSES**—Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action is admissible as provided in this subsection.

(a) Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.

(b) Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant has health care coverage but obtains treatment under a letter of protection or otherwise does not submit charges for any health care provider's medical treatment or services to health care coverage, evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.

3. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, evidence of 120 percent of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment or services, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.

4. If the claimant obtains medical treatment or services under a letter of protection and the health care provider subsequently transfers the right to receive payment under the letter of protection to a third party, evidence of the amount the third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection.

5. Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.

(c) Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive shall include, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, or is eligible for any such health care coverage, evidence of the amount for which the future charges of health care providers could be satisfied if submitted to such health care coverage, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, or is eligible for such health care coverage, evidence of 120 percent of the Medicare reimbursement rate in effect at the time of trial for the medical treatment or services the claimant will receive, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.

3. Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.

(d) This subsection does not impose an affirmative duty upon any party to seek a reduction in billed charges to which the party is not contractually entitled.

(e) Individual contracts between providers and authorized commercial insurers or authorized health maintenance organizations are not subject to discovery or disclosure and are not admissible into evidence.